

Title 16: History, Humanities and Arts - Mississippi Library Commission

Part 140: RULE MAKING

Part 140 Chapter 1: Introduction – Declaratory Opinions

The Board adopts and incorporates by reference the procedures for adoption and effectiveness of rules as found in §25-43-3-101 to §25-43-3-114 of the *Mississippi Code of 1972, Annotated*.

Rule 140.1.1 Requests for Declaratory Opinions.

- A. Scope of Rules. These sections set forth the Library Commission's rules governing the form and content of requests for declaratory opinions, and the Library Commissions procedures regarding the requests, as required by §25-43-2.103 of the *Mississippi Code of 1972, Annotated*.
- B. Requestors. Any person with a substantial interest in the subject matter may make a written request for a declaratory opinion by following the specified procedures. "Substantial interest in the subject matter" means that the interest must be direct, immediate, and not remote in consequence. A "substantial interest" is one which surpasses the common interest of all citizens.
- C. Matters Addressed. A declaratory opinion is intended to clarify a statute or rule or interpret how the statute or rule would apply in a particular situation. The Board may issue declaratory opinions regarding subject matters which are within the primary jurisdiction of the Library Commission. Subject matters within the primary jurisdiction of the Library Commission include the applicability of specified facts to a statute administered or enforced by the Library Commission or a rule promulgated by the Library Commission.
- D. Matters Not Addressed: Circumstances in Which Declaratory Opinions Will Not Be Issued. The Board may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 - 1. Matter is outside primary jurisdiction of Library Commission.
 - 2. Lack of clarity concerning question presented.
 - 3. Pending or anticipated litigation, administrative action, or other adjudication before an agency, administrative tribunal, or court which may either answer question presented or otherwise make answer unnecessary.
 - 4. Statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer question presented.
 - 5. Facts presented in request are not sufficient to answer question presented.
 - 6. Request fails to contain information required by rules or requestor failed to follow procedure set forth in rules.
 - 7. Request seeks to resolve issues which have become moot, or are abstract or hypothetical such that requestor is not substantially affected by rule, statute or order on which declaratory opinion is sought.

8. No controversy exists concerning issue as requestor is not faced with existing facts or those certain to raise question concerning application of statute, rule, or order.
 9. Question presented by request concerns legal validity of statute, rule, or order.
 10. Requestor has not suffered injury or threatened injury fairly traceable to application of statute, rule, or order.
 11. No clear answer is determinable.
 12. Question presented involves application of criminal statute or facts which may constitute crime.
 13. Answer to question presented would require disclosure of information which is privileged or otherwise protected by law from disclosure.
 14. Question presented is subject of pending or issued Attorney General's opinion request.
 15. Such opinion would constitute unauthorized practice of law.
 16. Such opinion may adversely affect interests of State, Library Commission, or officers or employees in any litigation which pending or may reasonably be expected to arise.
- E. Circumstances for Referral of Declaratory Opinions. Where a request for a declaratory opinion involves a question of law, the Library Commission may refer the matter to the Office of the Attorney General.
- F. Form of the Request.
1. Written Requests Required. Requests for a declaratory opinion shall be submitted in written form to the Executive Director by certified mail. The written request and the envelope must be plainly marked "Request for Declaratory Opinion." The request shall be dated and include the original signatures, mailing addresses, and telephone numbers of the individual(s) making the request.
 2. Content of Request. The request must be limited to a single transaction or occurrence and shall contain the following:
 - a. Clear identification of statute, rule, or order at issue;
 - b. Concise statement of issue or question presented for declaratory opinion;
 - c. Full, complete, and accurate statement of all facts relevant to resolution of question presented;
 - d. Statement sufficient to show that person seeking relief is substantially affected by rule.
- G. Procedure for Receipt of Request for Declaratory Opinion. Requests for a declaratory opinion shall be considered by the Board at the next regularly scheduled meeting, provided that the request is received not less than fifteen (15) working days prior to the meeting. Notification shall be provided to the requesting individual concerning the date, time, and place for consideration of the request for declaratory opinion. In the event a request is not received at least fifteen (15) working days prior to a regularly scheduled Board meeting, the Board shall hold a special meeting within forty-five (45) days of the receipt of the request, at which meeting the Board shall either: issue an opinion; decline to issue an opinion; or agree to issue an opinion no later than ninety (90) calendar days after receipt of the request, as required in §25-43-2.103(3). If the Board, in its sole discretion, deems it necessary or helpful

in determining any issue concerning a request for declaratory opinion, the Board may, with reasonable notice, provide requestors an opportunity to present testimony at the Board meeting. The mailing of notices ten (10) days prior to the meeting shall constitute reasonable notice.

- H. Public Access to Requests and Declaratory Opinions. Declaratory opinions of the Board shall be announced in writing with a copy mailed promptly to each requestor. Declaratory opinions and requests for declaratory opinions of the Board shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information that is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Mississippi Code of 1972, Annotated* §39-3-107 (Rev. 1988).